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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 9, 2006

Brian D. Weimer, Esq.
John M. Beahm, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Re: Birch Telecom, Inc.
Regulatory Fees Waiver Request
Fee Control No. RROG-06-00006418

Dear Counsel:

We have reviewed the September 7, 2005, request on behalf of the regulated affiliates of Birch Telecom, Inc. (collectively, "Birch") for waiver of payment of regulatory fees for fiscal year (FY) 2005.¹ For the reasons set forth below, we grant your request for waiver of \$154,189.51 in regulatory fees due for FY 2005.²

Based on proof of bankruptcy filed pursuant to Chapter 11 of the Federal Bankruptcy Code of the United States,³ we find that you established evidence of financial hardship and good cause to warrant granting the requested relief from the Section 9⁴ regulatory fees. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12761-62, ¶¶ 13-14 (1995) (evidence of bankruptcy or receivership is sufficient to establish financial hardship).

¹ Petition for Waiver and Deferral of FY 2005 Regulatory Fees, filed September 7, 2005 on behalf of Birch Telecom, Inc. (Petition). The Birch affiliates that are parties to this request include Birch Telecom of Kansas, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas LTD LLP., Birch Telecom of the South, Inc., Ionex Communications, Inc., Ionex Communications North, Inc., and IONEX Communications South, Inc. See Petition, Attachment 1.

² By this letter, we are also granting Birch's request that we defer the requirement to submit the fees until a decision is rendered on the request for the waiver.

³ Birch Telecom, Inc. and its regulated affiliates filed at Attachment 2 of its Petition, copies of the Voluntary Petitions for reorganization relief under Chapter 11 of the Bankruptcy Code, dated August 12, 2005, United States Bankruptcy Court, District of Delaware. See In re Birch Telecom, Inc. et al., Case No. 05-1237 (PJW).


⁴ 47 U.S.C. § 159.

Brian D. Weirmer, Esq. & John M. Beahn, Esq.

2.

Therefore, your request is granted. If you have any questions concerning this letter, you may call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Reger
Chief Financial Officer

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RR06-06-00006418

September 7, 2005

VIA HAND DELIVERY

Andrew Fishel
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W., Room I-A625
Washington D.C. 20554
Attn: Regulatory Fee Waiver and Deferral Request

RECEIVED

SEP - 7 2005

Federal Communications Commission
Office of Secretary

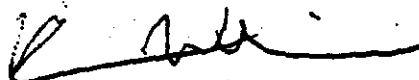
Re: Petition of Birch Telecom, Inc. for Waiver and Deferral of 2005
Regulatory Fees

Dear Mr. Fishel:

On behalf of Birch Telecom, Inc. and its affiliates ("Birch"), enclosed herewith please find an original and one (1) copy of Birch's Petition for Waiver and Deferral of its 2005 regulatory fees.

Should you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,



Brian D. Weimer
John M. Beahn
Counsel to Birch Telecom, Inc.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C.**

In the Matter of)
)
)

Assessment and Collection of)
Regulatory Fees for Fiscal Year 2005)
)

Petition of Birch Telecom, Inc. for)
Waiver and Deferral of Section 1.1157)
of the Commission's Regulations)
_____)

MD Docket No. 05-59

**PETITION FOR WAIVER OF REGULATORY FEES AND
DEFERRAL OF PAYMENT**

Pursuant to Section 9(d) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 159(d), and Section 1.1166 of the Commission's regulations, 47 C.F.R. § 1.1166, Birch Telecom, Inc. on behalf of its regulated affiliates (collectively, "Birch") hereby requests a waiver of Birch's obligation to pay regulatory fees for fiscal year 2005 and a deferral of payment of these fees, which would otherwise be due today, while the Commission considers the request for waiver.¹ These fees amount to \$154,189.51. Birch's inability to pay its 2005 regulatory fees arises from its August 12, 2005 filing for reorganization relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. As described below, a licensee's bankruptcy and filing for Chapter 11 reorganization is sufficient to establish

¹ The Birch affiliates that are parties to this Petition for Waiver and Deferral include Birch Telecom of Kansas, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas LTD LLP, Birch Telecom of the South, Inc., Ionex Communications, Inc., Ionex Communications North, Inc., and IONEX Communications South, Inc. See Attachment 1.

financial hardship, justifying the waiver and deferral of a licensee's regulatory fee payment obligations.

I. BACKGROUND

A. Company

Birch Telecom, Inc., through various affiliates, is licensed by the FCC to provide domestic and international telecommunications services.² Birch Telecom, Inc. is organized under the laws of the state of Delaware and, together with its twenty-eight direct and indirect debtor subsidiaries (collectively, the "Company"), provides small and medium-sized businesses with comprehensive voice and data services. The Company is one of the largest competitive local exchange carriers and provides telecommunications services throughout the central and southern United States. The Company maintains its headquarters in Kansas City, Missouri and operates sales offices and operations facilities across nine states including Alabama, Georgia, Kansas, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas, and maintains a customer base in eight additional states.

The Company's traditional voice services include local dial tone, long distance, and various calling features such as call waiting. Data services provided by Birch include digital high-speed Internet access, web hosting, and virtual networking. The Company offers its services through its own integrated voice and data network, and through network elements leased from incumbent local exchange carriers.

² The Company is authorized to provide domestic telecommunications services pursuant to blanket Section 214 authorization. The Company is authorized to provide international telecommunications services through international section authorization ITC-214-20010418-00248 held jointly by Birch Telecom of Oklahoma, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of the South, Inc., and Birch Telecom of the West, Inc.

B. Chapter 11 Reorganization

Since September 2004, the Company has assessed and pursued various strategic alternatives with the assistance of financial advisors and restructuring counsel. In early 2005, the Company and its advisors commenced negotiations with its senior lenders and certain stockholders in an effort to reach agreement on an out-of-court (or "prepackaged") Chapter 11 restructuring that would maximize the long-term value of the Company's business, reduce the Company's indebtedness, raise additional equity capital through the possible sale and issuance of new preferred stock, leave general unsecured creditors unimpaired, and maximize recoveries for all stockholders. Ultimately, however, the Company's negotiations with its senior lenders and certain stockholders failed to produce agreement on a prepackaged Chapter 11 plan.

Concluding that a prepackaged restructuring strategy was no longer viable, Birch and its affiliates commenced the Chapter 11 reorganization process on August 12, 2005 in the United States Bankruptcy Court for the District of Delaware.³ The Company intends to utilize the Chapter 11 process to promptly file a reorganization plan, preserve the value of its businesses, maximize recoveries to stakeholders to the extent possible, and restructure and reduce its indebtedness. The Company's senior lenders have agreed to provide debtor-in-possession financing to facilitate the company's Chapter 11 restructuring process. Upon exiting the bankruptcy process, the Company believes that it will be better situated to provide improved and expanded services to its customers.

³ See In re Birch Telecom, Inc. et al., Case No. 05-12237 (PJW).

II. DISCUSSION

Section 9 of the Communications Act requires that the Commission assess and collect regulatory fees on Commission licensees to cover the costs of certain regulatory and enforcement activities.⁴ Section 9 also provides the Commission with the authority to waive, reduce, or defer these regulatory fees "in any specific instance for good cause shown, where such action would promote the public interest."⁵ In 1995, the Commission promulgated its regulations applicable to waiver and deferrals of regulatory fees, determining that it would "grant waivers of the [regulatory] fees on a sufficient showing of financial hardship."⁶ Clarifying the standard necessary to obtain a waiver and deferral, the Commission further stated that "[i]t will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public."⁷ Finally, the Commission explained that "[e]vidence of bankruptcy or receivership is sufficient to establish financial hardship."⁸ As a result, the Commission concluded that it would "waive the regulatory fees for licensees ... [that] are bankrupt, undergoing Chapter 11 reorganizations or in receivership."⁹

⁴ 47 U.S.C. § 159.

⁵ 47 U.S.C. § 159(d). *See also* 47 C.F.R. § 1.1166 (implementing statutory provision).

⁶ *See In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, ¶ 13 (1995).

⁷ *Id.*

⁸ *Id.* at ¶ 14.

⁹ *Id.* The Commission reaffirmed its 1995 determination regarding financial hardship in 2003, stating that "bankruptcy generally represents sufficient evidence